

REMARKS**Restriction/Election**

In the March 25, 2009 Office Action, the Examiner imposed a species election under PCT Rule 13.1. Specifically, the Examiner required that an election be made between:

- Group I: claims 1, 3-4, 8, 12, 15, 22, 28, 31, 35, 47, 51-55 and 57, drawn to DNA constructs, vectors and bacteria comprising said construct wherein said construct comprises a first nucleic acid sequence coding for a product of interest, a second nucleic acid sequence coding for a dimerization domain, and a third nucleic acid sequence coding for *E. coli* HlyA;
- Group II: claims 38-42, 49, 56 and 58-59, drawn to a dimeric fusion protein obtainable by expression of a DNA construct comprising a first nucleic acid sequence coding for a product of interest, a second nucleic acid sequence coding for a dimerization domain, and a third nucleic acid sequence coding for *E. coli* HlyA; or
- Group III: claims 44-45, drawn to a method for producing a product of interest in the form of a dimeric fusion protein obtainable by expression of a DNA construct comprising a first nucleic acid sequence coding for a product of interest, a second nucleic acid sequence coding for a dimerization domain, and a third nucleic acid sequence coding for *E. coli* HlyA.

Applicants elect, with traverse, Group I (claims 1, 3-4, 8, 12, 15, 22, 28, 31, 35, 47, 51-55 and 57) drawn to DNA constructs, vectors and bacteria comprising said construct wherein said construct comprises a first nucleic acid sequence coding for a product of interest, a second nucleic acid sequence coding for a dimerization domain, and a third nucleic acid sequence coding for *E. coli* HlyA.

The traversal is based on the fact that the European Patent Office (EPO), acting as the International Search Authority of the international patent application PCT/EP2005/007535, from which the pending U.S. application derives, has already reviewed the unity of invention issue. In fact, the International Search Report (ISA) concluded that claims 1-59 met the requirement of unity of invention since no objections on said requirement was issued. Therefore, the ISA has found that the present invention relates to "one invention only or to a group of inventions so linked as to form a single general inventive concept" (PCT Rule 13.1).

The EPO has applied the PCT rules to the present invention without finding a lack of unity of invention. Therefore, the USPTO cannot now apply a different standard to the present invention than the EPO.

If the restriction is nonetheless made final, applicant reserves the right to take any other measure as deemed appropriate, such as the filing of a divisional application, in order to protect the subject matter of the non-elected claims.

Petition for Extension of Time/Fees Payable

Applicants hereby petition for a one (1) month extension of time, extending the deadline for responding to the March 25, 2009 Office Action from April 25, 2009 to May 26, 2009 (May 25, 2009 is a Federal holiday). As such, the fee of \$65.00 specified in 37 CFR §1.17(a)(1) for such one (1) month extension is due.

The total fee of \$65.00 is being paid using Electronic Funds Transmission. Authorization is also hereby given to charge any deficiency in applicable fees, or credit any overcharges, for this response to Deposit Account No. 13-4365 of Moore & Van Allen PLLC.

Conclusion

If any additional issues remain, the Examiner is requested to contact the undersigned attorney at (919) 286-8000 to discuss same.

Respectfully submitted,

MOORE & VAN ALLEN PLLC



Date: May 26, 2009

By: _____

Tristan A. Fuierer
Registration No. 52,926
Moore & Van Allen PLLC
430 Davis Drive, Suite 500
Morrisville, NC 27560-6832
Telephone: (919) 286-8000
Facsimile: (919) 286-8199